The liability of the owners and the liability of the ship commence at the same moment, and it will attach on delivery of the goods to the owner's servants alongside of the vessel: *British Columbia Saw Mill Co.* v. *Nettleship*, L. R., 3 C. P. 499; *The Edwin*, *supra;* 2 Pars. on Ad. and Ship. 252; Angell on Carriers 129, 148. Although of course neither owner nor ship will be liable if the delivery be made without any previous contract to a servant who has no authority, either apparent or real, to receive them: *Trowbridge* v. *Chapin*, 23 Conn. 595; *The Keokuk*, 9 Wall. 517.

THEODORE M. ETTING.

Philadelphia.

(*To be Continued.*)

RECENT AMERICAN DECISIONS.

Court of Appeals of New York.

VAN VOORHIS *v.* BRINTNALL ET AL.

The general rule that a contract, valid by the law of the place where it is made, is valid everywhere, includes the contract of marriage.

To this rule, as regards marriage, there are exceptions, first, of incest or polygamy coming within the prohibitions of natural law; and second, of prohibition by positive law.

While laws may have an extra-territorial effect, so far as to affect a citizen subject to them for acts done outside the state, yet such effect is exceptional, and a statute imposing a personal disqualification will not be construed to extend to acts done beyond the state, unless it contains express words to that effect.

The provision of the statute prohibiting a respondent divorced for adultery from marrying again is a penalty and has no extra-territorial effect.

A man divorced by the courts of New York for adultery, and therefore prohibited from marrying again, went to Connecticut with the intent to evade that prohibition, married and immediately returned to New York. *Held*, that the marriage was valid.

THIS was an action to determine the rights of the parties under the will of Elias Van Voorhis.

Barker Van Voorhis, a son of testator, was divorced from his wife in 1872, by a decree of the Supreme Court of New York, by which he was prohibited from marrying again. In 1874, being

still domiciled in New York, he and Ida Shraeder, also a citizen of New York, went to Connecticut and were duly married under the laws of that state. On the same day the couple returned to New York and remained domiciled there till the death of Barker in 1880. It was found as a fact by the court below, that they had gone to Connecticut for the purpose of evading the New York law. The plaintiff in error, Rose Van Voorhis, was the child of this marriage, and the question was whether she was a legitimate child of Barker, and therefore entitled to share under the will of her grandfather, the testator.

D. M. Porter, for appellant.

C. W. Stevens and *R. Busteed, Jr.*, *contra.*

The opinion of the court was delivered by

DANFORTH, J. [After stating the facts.] The question involves the civil status acquired by Barker Van Voorhis and Ida by the marriage in Connecticut. First. It is a general rule of law, that a contract entered into in another state or country, if valid according to the law of that place, is valid everywhere (*The King of Spain* v. *Machado*, 4 Russ. 225; *Potter* v. *Brown*, 5 East 130; Story Conflict of Laws, sect. 242); and this, says KENT, 2 Com. 454, is *jure gentium*, and by tacit assent; and Lord BROUGHAM, in *Warrender* v. *Warrender*, 2 Cl. & Fin. 529, 530, declares that the courts of the country where the question arises resort to the law of the country where the contract was made, not *ex comitate* but *ex debito justitiæ;* and, according to the case in hand, the rule recognises as valid a marriage considered valid in the place where celebrated: Story Conflict of Laws, sects. 69, 79; *Connelly* v. *Connelly*, 14 Jur. 437. "We all know," says the court in that case, "that in questions of marriage contract, the *lex loci contractus* is that which is to determine the status of the parties," and also declares that this, by consent of all nations, is *jus gentium*. In *Dalrymple* v. *Dalrymple*, 2 Hagg. 54, it was held that a marriage good in Scotland, though otherwise by the laws of England, is valid in that country; and this was put upon the ground that the rights of the parties must be tried by reference to the law of the country where they originated. In *Scrimshire* v. *Scrimshire*, 2 Hagg. 395, the same principle is stated in different words. The

court says: "All parties contracting gain a forum in the place where the contract is entered into:" *Warrender* v. *Warrender*, *supra*; *Lacon* v. *Higgins*, Don. & R. N. P. C. 38; *Butler* v. *Freeman*, Amb. 303. Not only is this the result of English decisions, but is believed to state the principle upon which the courts of many of our sister states have acted: *Greenwood* v. *Curtis*, 6 Mass. 358; *Medway* v. *Needham*, 16 Id. 157; *Parton* v. *Hervey*, 1 Gray 119; *Putnam* v. *Putnam*, 8 Pick. 433; *Dickson* v. *Dickson*, 1 Yerg. 110; *Stevenson* v. *Gray*, 17 B. Mon. 193; *Fornshill* v. *Murray*, 1 Bland Ch. 479, and by which our own with few exceptions, have been governed. In *Decouche* v. *Savetier*, 3 Johns. Ch. 210, Chancellor KENT says: "There is no doubt of the general principle that the rights dependent upon nuptial contracts are to be determined by the *lex loci*." In *Cropsey* v. *Ogden*, 11 N. Y. 228, JOHNSON, J, says: "By the universal practice of civilized nations, the permission or prohibition of particular marriages of right belongs to the country where the marriage is to be celebrated." The court had before it the case of one who, having a former wife living, from whom he then had been divorced for adultery by him committed, married a second time in this state. His last marriage was held to be void under our statute prohibiting a second or other subsequent marriage by any person during the lifetime of any former husband or wife of such person. Here the former marriage, his adultery and the existence of his first wife, established the condition or quality of the man. They were facts in his history, and brought him within the terms of our law. The general rule above stated was applied. The *lex loci* governed. But the court said it was not necessary for them to consider what would have been the effect of a marriage celebrated out of this state. Its attention was, however, directly brought to the statute relating to marriages, and the circumstances under which the remarks above quoted, and others seeming to discriminate between a marriage in this state and out of it, were made, render them the more significant. In *Haviland* v. *Halstead*, 34 N. Y. 643, a person divorced for the same offence in this state, promised in New Jersey to marry the plaintiff. He married another, and an action for the breach of this promise was brought here, and failed. The parties resided in this state and contemplated the performance of the contract here. The court carefully distinguish the case so presented from one where a marriage had taken place in a foreign state. They

assume that the latter would be treated as valid, although the parties had gone there with intent to evade the laws of this state, and citing *Medway* v. *Needham*, *supra*, say the doctrine "in favor of marriage so contracted is founded on principles of policy, to prevent the great inconvenience and cruelty of bastardizing the issue of such marriages, and to avoid the public mischief which would result from the loose state in which people so situated would live." Indeed, the general doctrine is so well settled by the decisions of all courts and the reiteration of text-writers, as to become a maxim in the law, that one rule in these cases should be followed by all countries; that is, the law of the country where the contract is made: Story, *supra*, 84; 2 Kent Com. 91, 92. There are, no doubt, exceptions to this rule. Cases, first, of incest or polygamy coming within the prohibitions of natural law: *Wightman* v. *Wightman*, 4 Johns. Ch. 343; *Hutchins* v. *Kimmell*, 31 Mich. 133; Story, *supra*, sect. 113, 7th ed; second, of prohibition by positive law. It is contended by learned counsel for the respondent, that the judgment may be upheld upon the ground that the marriage is one of the latter class. The assertion, however, is left unsupported by argument or the citation of authorities. Its truth is not so self-evident as to dispense with either, and the omission, coupled with our own examination, leaves us to think that the courts have not yet spoken with a controlling voice in its favor. It is to be maintained, if at all, upon the prohibition in the judgment of divorce already referred to, and the provisions of the statute which made the judgment proper: *Graves* v. *Graves*, 2 Paige 62. The question is not one of ethics or morality but the extent of the authority of the statute as a rule of conduct. As a direct inquiry, it is here for the first time. There are *dicta* and expressions having relation to it in *Cropsey* v. *Ogden*, and *Haviland* v. *Halstead*, *supra*, tending to confine the effect of the statutory prohibition and declaration of invalidity to second marriages within this state; but in neither case was the precise question before the court for judgment. In other courts of this state it has met with differing answers. In the Supreme Court, First Department (*Marshall* v. *Marshall*, 2 Hun. 238, by a divided court, and *Thorpe* v. *Thorpe*, Superior Court of the City of New York, following it), a marriage under similar circumstances was held void. The judgment now before us went upon the principle of *stare decisis*, the court below also following *Marshall* v. *Marshall*,

supra. *Kerrison* v. *Kerrison*, Special Term, Fourth Department, 8 Abb. N. C. 444, and *Matter of Webb*, 1 Tucker 372 (Sur. Ct.), are to the contrary. To the latter class may be added *Ponsford* v. *Johnson*, before NELSON and BETTS, JJ., 2 Blatch. 51. These decisions are irreconcilable, and any determination reached by us must overrule one class or the other. We are therefore at liberty to treat the subject as *res integra*, unaffected by any paramount authority, although greatly assisted by the reasoning of the learned judges who have taken part in those judgments.

The statutory provisions relied upon by the respondent are found in part 2, ch. 8 of the Revised Statutes, entitled "Of the domestic relations," and especially in those articles which treat "of husband and wife," tit. 1, arts. 1–5, vol. 3, p. 148. The statute does not define marriage, or introduce a new formula for the relation, but treats it as existing, and declares it shall continue "in this state" a civil contract. Sec. 1, ch. 8, tit. 1, art. 1, part 2, adopts the principles of the common law, which renders invalid marriages between persons connected by certain lines of consanguinity (sec. 8, Id.), or who, for want of age or understanding, are incapable of consent, or who, if capable, have been induced to give it by fraud or force: Sec. 4, Id. It then declares that no second marriage shall be contracted by any person during the lifetime of any former husband or wife of such person, unless the marriage with such "former husband or wife shall have been dissolved for some cause other than the adultery of such person; and that every marriage contracted contrary to this provision shall be absolutely void:" Sec. 5, Id. These circumstances are re-stated as grounds of divorce, and it is enacted that "whenever a marriage shall be dissolved pursuant to the provisions of this article, the complainant may marry again during the lifetime of the defendant; but no defendant convicted of adultery shall marry again until the death of the complainant:" Sec. 49, Id., art. 3. As originally enacted, the same statute (tit. 1, *supra*, sec. 2) not only made the consent of parties essential, but limited the class to those "capable in law of contracting," and by its definition excluded males under seventeen and females under fourteen years of age. Although this provision has been repealed, it throws some light upon the legislative intent in devising the system of laws concerning husband and wife. Conditions were annexed, not only to the duration, but the creation of this relation, and the frequency

with which it might be formed. Certain persons were declared capable, others incapable of forming it, and still others must submit to its dissolution. In one instance, as in the case before us, it cannot be contracted with another while the first co-contractor is living. It is obvious that this last condition is in the nature of a penalty: *Wait* v. *Wait*, 4 N. Y. 101; *Comm.* v. *Lane*, 113 Mass. 471. It forms no part of the relief sought by the injured party, has no tendency toward compensation, nor is it imposed to that end. It is restraint or punishment: *West Cambridge* v. *Lexington*, 1 Pick. 506–508; *Clark* v. *Clark*, 8 Cush. 386. The fact of adultery is, in the language of the statute, an "offence," the person committing it a "guilty person," and when established by judgment he is said to be "convicted;" he is, in consequence of it, deprived of a natural right or privilege which others enjoy. Moreover, for violating this statutory provision, he is at least rendered liable to fine and imprisonment as for a misdemeanor (2 R. S., part 4, ch. 1, tit. 6, p. 696, secs. 39, 40), if not for felony, under the provisions of article 2 of the same statute: 2 R. S., p. 687, vol. 2. The opinion of WALWORTH, Chancellor, went to that extent in *Graves* v. *Graves*, 2 Paige 62; and, although *People* v. *Hovey*, 5 Barb. 121, is to the contrary, the measure of the offence is not now important, and the last case holds to the misdemeanor. To that extent the law is plain. The real question is whether such a statute furnishes an exception to the maxim "*Leges extra territorium non obligant.*" It is not necessary to assert that the power of the legislature is so limited that no law passed by it would accompany a citizen into other countries, and there control or modify the legal effect of his actions. Nor need we deny that it might be so framed as to affect his person, and subject him in this state to punishment for its violation elsewhere, upon his return to the jurisdiction of our courts. On the contrary it is to be regarded as settled law that as all persons within its borders, whether citizens or aliens, are liable to be punished for any offence committed in this state against its laws, its citizens may also be punished for acts committed beyond its borders, where there is a special provision of law declaring the act to be an offence, although committed out of the state: Maxwell on Statutes 119, 128: *Cope* v. *Doherty*, 2 De G. & J. 624; 1 Burge Col. & For. Laws 196. So, also, may an act committed out of the state be made to affect an individual, whether citizen or foreigner, when he comes within

its borders and does some other act of which our laws take notice. Nor are examples of legislation effecting these results wanting. The statute defining acts which constitute treason (tit. 1, part 4, ch. 1, p. 928; 3 R. S., sec. 2) illustrates the first. It subjects the offender to punishment, whether the act prohibited is done "in this state or elsewhere." That against duelling is an example of the second. It makes one who, by previous engagement, fights a duel without the jurisdiction of this state, and in so doing inflicts a wound upon any person, "whereof he shall die within this state," and every second engaged in such duel, guilty of murder within this state. And still more in point, as illustrating its manner of expression, where the legislature intends to take cognisance of an act committed outside the limits of the state, or to impress upon the *status* of its citizens a condition of liability for such an act, are the revisions of the statute treating of offences against "the public peace and public morals:" tit. 5, part 4, ch. 1, act. 1, vol. 2, R. S. After providing punishments for fighting duels, sending challenges, &c., in the most general terms, excluding no one from its condemnation, but within the general maxim above quoted, having no extra-territorial force, comes a provision which, by its special language, attaches to the citizen, goes with him as he crosses the line of this state, and binds him with an obligation in what place soever he is. "If," it says (sec. 5, Id.), "any inhabitant of this state shall leave the same for the purpose of eluding the operation" of these provisions, and "shall give or receive any such challenge" * * * without this state, he shall be deemed guilty and subject to the like punishment as if the offence had been committed within this state. And we shall see later a provision similar to this, now forming part of the law relating to marriages in the state of Massachusetts. Another instance well shows by contrast the necessity of a declaration that the arm of the law shall be so extended. In proximity to the provisions I have quoted, in the next article (sect. 8), is the statute "of unlawful marriages," defining bigamy and declaring its punishment, saying, in general terms, "every person having a husband or wife living who shall marry any other person" (with exceptions of no moment here), shall be adjudged guilty of bigamy, providing (sect. 10) that an indictment may be found against any person for a second, third or other marriage herein prohibited, in the county in which he shall be apprehended, and the same proceedings had

thereon, "as if the offence had been committed therein." Yet there are no enlarging words affixing themselves to the person of the citizen, as in the statute before quoted, or bringing within its purview "a second or other marriage," contracted out of the state; and therefore, on the trial of one who was indicted for bigamy, the second marriage having taken place in Canada, it was held as early as 1855, by a court presided over by the late Judge W. F. ALLEN, then a justice of the Supreme Court, that this statute had no application; that the second marriage was not an offence against the laws of this state, because they have no "extra-territorial force." In like manner, if Barker Van Voorhis had, on his return to this state, after accomplishing his second marriage, been indicted under the statutes to which I have referred, either for bigamy or for doing a prohibited act, it would necessarily follow that the indictment would fail. Yet the words of the statute are general; in themselves they contain no limitation. But we have been referred to no case, and I think none can be found, where such general words have been interpreted so as to extend the action of a statute beyond the territorial authority of the legislature, and it is only by extending it that our courts can take cognisance of acts there committed.

Of the third class, an example is afforded by our statute defining punishment for a second offence. Sect. 8, p. 699, vol. 2, Rev. Stat., part 4, ch. 1, tit. 6. "If any person," it says, "convicted of any offence punishable by imprisonment, &c., shall afterwards be convicted of any offence, he shall be punished" in a mode prescribed. It is evident that these words are general, and taken literally would apply to "any person" committing an offence in or out of the state. Applying the mode of construction contended for by the respondent, nothing more could be necessary. But the legislature show that such is not its meaning. By sect. 10 they declare that "every person who shall have been convicted in any of the United States, or in any district or territory thereof, or in any foreign country, of an offence which if committed in this state would," &c., "shall upon conviction of any subsequent offence, committed within this state, be subject to punishment in the same manner and to the same extent as if the first conviction had taken place in a court of this state." Thus by implication is expressed the opinion of the legislature that the general words of the eighth section, *supra*, would not

meet the case provided for in the tenth section. In Massachusetts, after a statute extending the prohibition against a second marriage, under circumstances before stated, to inhabitants of that state going out of it to evade the law, it was held that if, in any event, the foreign marriage could be invalidated, it could not be without proof of the intent made necessary by statute. Nor without it could there be a conviction for polygamy: *Comm.* v. *Lane*, 113 Mass. 458. A similar distinction exists under the English law. In 1 Hale P. C. 662, the case is stated of a woman who married in England, and afterward married abroad during her husband's life. It was held she was not indictable under the statute of the former country for bigamy, for the offence was committed out of the kingdom, and the act did not in express terms extend its prohibition to subjects abroad. It is otherwise, however, in regard to certain offences committed in other countries by Englishmen against their government, viz., murder and slave-trading, because the statutes have so provided: *Warrender* v. *Warrender*, *supra*. Now if the criminal court has no jurisdiction to punish the act when committed out of the state, how has the civil court jurisdiction to prohibit the doing of the act out of the state. The consequences are the same in either case, and are prescribed by the same statute. Whether a man is punished by fine and imprisonment, or by disgrace to himself and the woman he married—the bastardy of his children—is a difference in degree only. The severer punishment is in the last alternative. Can the court imply the right to inflict it? Can it exist unless given in express language? I think not. The statute does not in terms prohibit a second marriage in another state, and it should not be extended by construction. The mode of construction contended for by the respondent, if applied to the statutes of treason and duelling and the punishment of second offences, would make useless those provisions which relate to the conduct of a citizen out of the state, or the commission of crime in this state by one convicted in another state. Can they be disregarded, or the legislature charged with useless enactments? On the contrary, we must give weight and meaning to them; to their presence in those laws and their absence in the one of marriages. The difference is essential, and the varying language cannot be disregarded. There is first a prohibition broad as in the act before us, wide enough to take in all persons within the state, and prohibiting certain acts—a per-

sonal prohibition. Not content with that, the statutes go further and extend the same consequences to those acts when committed out of the state. These provisions are lacking in the law before us. When, therefore, we consider the legislation of this state before referred to, and the general rules regulating the territorial force of the statutes, we cannot but regard the omission to provide by law for cases like the present as intentional; but if not, in the language of Lord ELLENBOROUGH, in *Rex* v. *Skone*, 6 East 518, "we can only say of the legislature, *quod voluit non dixit.*" This view is sustained by the course of decision and legislation in Massachusetts. In *Medway* v. *Needham*, *supra*, the plaintiff sued for the support of certain paupers, one Coffee and his wife, alleged to have their legal settlement with the defendant. The only question on the trial, or the subsequent hearing before the whole court, respected the validity of the marriage. He was a mulatto, and his supposed wife a white woman. They were inhabitants and residents of Massachusetts at the time of their marriage, and the statement is that "as the laws of the province at that time prohibited all such marriages, they went into the neighboring province of Rhode Island, and were there married according to the laws of that province," and returned immediately to their home. Both courts hold the marriage good. The statute regulating marriages in Massachusetts was at that time like our own, but the court placed their decision upon the general principle that a marriage good according to the laws of the country where it is entered into shall be valid in any other country, PARKER, C. J., saying: "This principle is considered so essential that even where it appears that the parties went into another state to evade the laws of their own country, the marriage in the foreign state shall be valid in the country where the parties live;" and referring to the statute which declares second marriages absolutely void, says: "They are only void if contracted within this state:" *West Cambridge* v. *Lexington*, 1 Pick. 506, involved the rights of infant children of Samuel Bemis, paupers, to public support in that state. The question turned upon the validity of his second marriage. His first had been dissolved for his adultery. Afterwards, and while his former wife was living, he married in New Hampshire, and the children were from that union. The court held that if the marriage had been contracted in Massachusetts, it would be unlawful and void; but that the laws of no country have

force outside of its own jurisdiction, and, therefore, one who by reason of his offence against it is disabled from contracting another marriage, may lawfully marry again in a state where no such disability is attached to the offence; and further, having a right to marry there, he could not, while there, violate the statutes of Massachusetts against polygamy. It was therefore held that the children were legitimate, their settlement to be where that of their father was, and the town entitled to recover for their support. The circumstances of *Putnam* v. *Putnam*, 8 Pick. 433, are singularly like those before us, and it was held that although the second marriage was a clear case of evasion of the laws of the Commonwealth, it was valid upon the general rule referred to in the cases already cited. The court also says: "If it shall be found inconvenient or repugnant to sound principle, it may be expected that the legislature will explicitly enact that marriages contracted within another state—which, if entered into here, would be void—shall have no force within this Commonwealth." There is thus recognised a necessity, discussed earlier in this opinion, for express legislation, if the citizen is to be held bound by the laws of this state for acts performed by him outside its limits. Legislation to this end was afterwards had; Rev. Stat. of Mass., ch. 75, sect. 6; Tenn. St., ch. 106, sect. 6. Referring to provisions of the act making void marriages between certain parties, or by persons in prescribed conditions, or under certain circumstances, it declares, "where persons, resident in this state, in order to evade the preceding provisions, and with an intention of returning to reside in this state, go into another state or country and there have their marriage solemnized, and afterwards return and reside here, the marriage shall be deemed void in this state." It is not necessary to consider the extent or scope of this statute. It has been discussed by the courts of this state, and is said by DEWEY, J., in *Commonwealth* v. *Hunt*, 4 Cush. 49, "to have been intended to meet this class of cases—that is, of individuals fraudulently attempting to evade the laws of Massachusetts, so far as respects persons divorced for adultery—and to declare such marriages by the guilty party to be void in this Commonwealth;" or as HUBBARD, J., says, in *Sutton* v. *Warren*, 10 Metc. 453, "The only object of this provision is, as stated by the commissioners in their reports, to enforce the observance of our own laws upon our own citizens, and not suffer them to violate regulations founded in a just

regard to good morals and sound policy." We have no law in relation to this subject similar to that of Massachusetts, or our statutes before cited, in reference to duelling and treason. There is nothing in the statute to indicate an intention of the legislature to reach beyond the state to inflict a penalty. Nor can I discover an intent to so impress the citizen with the prohibition as to make an act which is innocent and valid where performed an offence when he returns to this state, and himself a criminal for performing it. Every presumption is against such intention. The respondents rest their case upon the general words of the statute. These, taken in their natural and usual sense, would undoubtedly embrace the case of the appellant. "No second * * * marriage shall be contracted by any person during the lifetime of any former wife of such person." "Every such marriage shall be absolutely void." "No defendant convicted of adultery shall marry again until the death of the complainant." Equally broad are the provisions of the criminal law declaring the punishment of the offender. They would comprehend every second marriage wherever celebrated, and take in the citizens of every state. It cannot be denied that they are subject to explanation and restraint (*Mosher* v. *People*, *supra*), and the principle upon which it rests shows the criminal law to have no application to a marriage out of the state. The same rule was applied in *Sims* v. *Sims*, 75 N.Y. 466, where, after a very full discussion of the question involved, it was decided that the provision of the revised statutes (3 R. S. 994, sect. 23), declaring a person sentenced upon a conviction of a felony to be incompetent as a witness, does not apply to a conviction in another state; that it has reference only to a conviction in this state. The conviction was in Ohio. It was assumed that the convict would have been incompetent as a witness in that state. Suppose a judgment here followed his evidence, and it was afterwards prosecuted in Ohio. Would it be competent in defence to show that it was obtained upon evidence inadmissible by the laws of Ohio? Clearly not. And the reason is stated in the case cited. "The disqualification is in the nature of an additional penalty following and resulting from the conviction, and can not extend beyond the territorial limits of the state where the judgment was pronounced." He was therefore, a competent witness in the state of New York. There is, in principle, a close analogy between the case I have supposed and the one before us. In each

there is personal disqualification—in one, to marry; in the other, to testify. In neither case does the disqualification arise from any law of nature or of nations, but simply from positive law. Each deprived the offender of a civil right. Now in case of the witness, his testimony results in a judgment, a contract of record, to which, when it reaches Ohio, full effect must be given, and for its enforcement the machinery of the law in that state put in motion. In the other case, that in hand, a contract is entered into by the offender, which is a good contract under the laws of the state where made. If so, it should also follow that to each party thereto and to their issue every right and privilege growing out of the relation so established must attach. When, therefore, they return to this state with the evidence of that contract, can the courts do more than in the other case? Are they not limited to the inquiry whether the contract was valid in the state where made? And if it was, how can they deny to the child its inheritance? Let me go a little further. Suppose, on the day the decree of divorce was granted, Barker had also been convicted and sentenced for felony. He would then have been subject not only to the statutes above cited, but to that other which declares "that no person sentenced upon a conviction for felony shall be competent to testify in any cause:" 3 R. S. 994, sect. 23. Disqualified, therefore, to marry or to testify, he does both in Connecticut, brings back to this state the judgment record and the marriage contract. If the first can not be impeached because of his sentence, neither, as it seems to me, can the other because of his "conviction." And for the same reason—viz., that stated by Greenleaf as the result of the weight of modern opinion, sanctioned by this court in *Sims* v. *Sims*, *supra*, that personal disqualifications arising, not from the laws of nations, but from positive laws, especially such as are of a penal nature, are strictly territorial, and cannot be enforced in any country other than that in which they originated.

Second. Nor are we, in the absence of express words to that effect, to infer that the legislature of this state intended its law to contravene the *jus gentium*, under which the question of the validity of a marriage contract is referred to the *lex loci contractus*, and which is made binding by consent of all nations. It professedly and directly operates on all. To impugn it is to impugn public policy; and while each country can regulate the status of

its own citizens, until the will of the state finds clear and unmistakable expression, that must be controlling. "Where," says MARSHALL, C. J. (*United States* v. *Fisher*, 2 Cranch 380), "rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."

Our conclusion is that as the marriage in question was valid in Connecticut, the appellant, Rose Van Voorhis, is a legitimate child of Barker, and as such entitled to share in the estate of the testator.

The judgment should be reversed, and a new trial granted, without costs to the plaintiffs or Sarah A. Brintnall, but with costs to the appellant, Rose Van Voorhis, and to respondents, Ella and Elias, to be paid out of the estate.

All concur, except FOLGER, C. J., not voting.

The principal case must be regarded as determining for the state of New York, a very serious question in the law of marriage. Few graver questions are brought before the courts for determination, than those relating to the validity of marriage and the legitimacy of offspring. Any adjudication upon so important a subject, and emanating from so distinguished a court as the New York Court of Appeals, must necessarily be of great interest to the profession, and will be examined with care, in both America and England.

It is laid down in the foregoing opinion, that "it is a general rule of law, that a contract entered into in another state or country, if valid according to the law of that place, is valid everywhere." And cases are cited to the effect that a marriage valid where celebrated, is valid everywhere. It is submitted, however, with the greatest deference, that while the general rule may be as stated, it is not applicable to the state of facts existing in the particular case, and that the conclusion announced, cannot be sustained upon the authority of the English or American cases. In *Brook* v. *Brook*, decided in the House of Lords in 1861, (9 House of Lords Cases 193), the Lord Chancellor said: "There can be no doubt of the general rule, that a foreign marriage, valid according to the law of a country where it is celebrated is good everywhere." But while the forms of entering into the contract of marriage are to be regulated by the *lex loci contractus*, the law of the country in which it is celebrated, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Although the forms of celebrating the foreign marriage may be different from those required by the law of the country of domicile, the marriage may be good everywhere. But if the contract of marriage is such, in essentials, as to be contrary to the law of the country of domicile, and it is declared void by that law, it is to be regarded as void in the country of domicile, though not contrary to the law of the country in which it was celebrated. This qualifi-

cation upon the rule, that a marriage valid where celebrated is good everywhere, is to be found in the writings of many eminent jurists who have discussed the subject. * * * It is quite obvious that no civilized state can allow its domiciled subjects or citizens, by making a temporary visit to a foreign country to enter into a contract, to be performed in the place of domicile, if the contract is forbidden by the law of the place of domicile as contrary to religion, or morality, or to any of its fundamental institutions. In this case a marriage celebrated in Denmark, between persons domiciled in England, and which was valid according to the law of Denmark, was held void in England. The man had married the sister of his deceased wife, and the parties had gone to Denmark to evade the English law forbidding such marriages. The latest authoritative exposition of the English law is to be found in the opinion pronounced in the Court of Appeals as late as 1877, in *Sottomayor* v. *De Barros*, Law Rep., 3 Prob. 1. In that case it is said: "But it is a well recognised principle of law, that the question of personal capacity to enter into any contract, is to be decided by the law of domicile. It is, however, urged that this does not apply to the contract of marriage, and that a marriage valid according to the law of the country where it is solemnized is valid everywhere. This, in our opinion, is not a correct statement of the law. The law of a country where a marriage is solemnized, must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been constituted; but as in other contracts, so in that of marriage, personal capacity must depend on the law of domicile." And it was held that where a marriage was celebrated in England between citizens domiciled in another country, the marriage would be held void in England, if the parties were prohibited from marrying by the law of their domicile, and in an English work on the law of domicile, but recently published, we find it laid down as follows: "The validity of a marriage depends on two conditions: first, on the *capacity* of the parties to marry each other; secondly, on the celebration of the marriage in due *form*. The capacity of each of the parties to a marriage, is to be judged of by their respective *lex domicilii*. Dicey on Domicile, p. 202.

There are English cases which might seem at first blush, not to warrant the principle thus laid down, but a broad distinction exists between such cases, which must not be lost sight of. For instance a marriage between an English subject domiciled in England, and a foreigner, would be held valid in England, although the foreigner might be prohibited from contracting the marriage by the law of his domicile. And this upon the principle that no country is bound to recognise the laws of a foreign state, when they work injustice to its own subjects: *Sottomayor* v. *De Barros*, L. R., 3 Prob. D. 1, 6, 7; and s. c., on further hearing, 19 Am. Law Reg. N. S. 76. Again, there are cases which recognise the validity of a marriage, where the parties have married away from their own country, for the purpose of evading the requirements of the law of domicile as to the consent of parents. But it is to be remarked, that the consent of parents, or others necessary to the validity of a marriage, are considered as part of the ceremony or form of marriage. See Dicey on Domicile, p. 203.

In the opinion in the principal case, much stress is laid upon the Massachusetts cases, and especially upon the case of *Medway* v. *Needham*, 16 Mass. 157 (1819), which was identical in principle with the one under discussion. It is interesting, therefore, to note the criticism passed on that case in the House of Lords. "I cannot think," said the Lord Chancellor, "that it is entitled to much weight, for the learned judge ad-

mitted that he was overruling the doctrine of Huberus and other eminent jurists; he relied on decisions in which the forms only, of celebrating the marriage in the country of celebration and in the country of domicile were different; and he took the distinction between cases where the absolute prohibition of the marriage is forbidden, on mere motives of policy, and where the marriage is prohibited as being contrary to religion on the ground of incest. I myself must deny the distinction. If a marriage is absolutely prohibited in any country as being contrary to public policy, and leading to social evils, I think that the domiciled inhabitants of that country cannot be permitted, by passing the frontier and entering another state in which this marriage is not prohibited, to celebrate a marriage forbidden by their own state, and immediately returning to their own state, to insist on their marriage being recognised as lawful." And Lord CRANWORTH, at the same time, remarked, "I also concur entirely with my noble and learned friend, that the American decision of *Medway* v. *Needham*, cannot be treated as proceeding on sound principles of law." And as to *Sutton* v. *Warren*, 10 Metcalf 451 (1845), also cited in the principal case, the Lord Chancellor said: "I am sorry to say, that it rather detracts from the high respect with which I have been in the habit of regarding American decisions, resting upon general jurisprudence. * * * I am bound to say that the decision rested on a total misapprehension of the law of England. * * * This decision, my Lords, may alarm us at the consequences which might follow from adopting foreign notions on such subjects, rather than adhering to the principles which have guided us and our fathers, ever since the Reformation." See *Brook* v. *Brook*, 9 House of Lords Cases 193. Mr. Burge, too, in his Commentaries on Colonial and Foreign Laws, p. 188, disapproves the Massachusetts cases, and maintains that the doctrine of the *lex loci* ought not to be extended to make valid the marriage, where the party retains his domicile in the country in which the prohibitory law prevails, and resorts to another state for the purpose of evading the law of his own.

The conclusion reached in the principal case is not only opposed to the doctrine of the English Court of Appeal, and of the House of Lords, but it is equally opposed to the weight of authority in this country.

The Supreme Court of North Carolina in 1854, passed upon a state of facts in all respects similar to those existing in the principal case. A divorce was obtained in North Carolina, and the guilty party was prohibited from marrying under a statute similar to the one in New York. The parties left the state for the purpose of contracting a marriage in evasion of the law, and having been married in South Carolina, where such a marriage was not prohibited, returned into North Carolina. The courts of the latter state held the marriage void. "Although it be true," said RUFFIN, Ch. J., "that generally, marriages are to be judged by the *lex loci contractus*, yet every country must so far respect its own laws, and their operation on its own citizens, as not to allow them to be evaded by acts in another country, done purposely to defraud them. It cannot allow such acts abroad, under the pretence that they were lawful there, to defeat its own laws at home, in their operation upon persons within her own territory." *Williams* v. *Oates*, 5 Ired. 535. The subject has recently been before the same court, and the former ruling was adhered to. *State* v. *Kennedy*, 76 N. C. 251 (1877). In this last case *Brook* v. *Brook*, *supra*, is approved, and the Massachusetts case of *Medway* v. *Needham*, *supra*, noticed and denied. "As to the formalities of marriage, the *lex loci* will govern. But when the law

of North Carolina declares," said the court, "that all marriages between negroes and white persons shall be void, this is a personal incapacity which follows the parties wherever they go, so long as they remain domiciled in North Carolina. And we conceive that it is immaterial whether they left the state with the intent to evade its law or not, if they had not *bona fide* acquired a domicile elsewhere at the time of the marriage. * * * A law like this of ours would be very idle if it could be avoided by merely stepping over an imaginary line." The same principle was announced in Louisiana in 1855, in *Dupre* v. *Executor of Boulard*, 10 La. Ann. 411. It was there held that a marriage celebrated in France, between parties domiciled in Louisiana, and in evasion of the law of domicile, was void. So in Tennessee in *State* v. *Bell*, 7 Baxter 9 (1872), where the court declares that the principle that a marriage valid where celebrated, is valid everywhere, is confined to the manner and form of the marriage, and does not apply to the capacity of the parties to contract the marriage. And it was there held that where a man married a woman of color in Mississippi in evasion of the law of Tennessee, and returned to the latter state, he could be indicted, although the marriage was valid in Mississippi. The same doctrine is announced in Virginia in *Kinney* v. *Commonwealth*, 30 Gratt. 858 (1878). In this case a negro and a white woman domiciled in Virginia, went into the District of Columbia, and were married in evasion of the law of their domicile. Upon their return the marriage was held void. We do not understand that in any of these cases, the statute expressly declared the marriage void, although entered into in another state. They are decided upon the authority of *Brook* v. *Brook*, *supra*, holding that the *lex domicilii* must determine the capacity of the parties. In the Virginia case, last cited, *Medway* v. *Needham*, as in most of the other cases, was expressly referred to, and openly repudiated as having been decided upon incorrect principles. It was admitted in a recent case in Massachusetts, in *Commonwealth* v. *Lane*, 113 Mass. 458, 465 (1873), that *Medway* v. *Needham* was decided upon the authority of English cases, in which the question concerned the *form* of the marriage, and not the *capacity* of the parties. In *Putnam* v. *Putnam*, 8 Pick. 433 (1829), the court in following *Medway* v. *Needham*, declared it was aware of all the objections to the ruling made in that case, but that the court in making it "adopted the rule of the law of England on this subject." *Medway* v. *Needham* must therefore be regarded as based upon a misconception of the extent of the principle, that a marriage valid where celebrated is valid everywhere.

Next to the Massachusetts cases, the case chiefly relied on in this country, by the advocates of the doctrine enunciated in the principal case, is *Stevenson* v. *Gray*, 17 B. Monr. 193 (1856). It is true that an opinion was expressed in that case, that a marriage, contracted under a similar state of circumstances to those existing in the principal case, would be valid in the place of domicile, and *Medway* v. *Needham* was referred to as an authority for the opinion. But the facts of the case did not make necessary the expression of any opinion upon that point, and the court expressly declared that no conflict could arise, upon the facts, "between the *lex loci contractus* and the *lex rei sitæ*, or between the *lex domicilii* and either or both of the others," as the marriage, even though it had been celebrated in Kentucky, would not have been, under the peculiar phraseology of their statute *void*, but only *voidable*. That after death of one of the parties, the marriage could not be avoided, and therefore the children must be regarded as legitimate. And so in the more recent case of *Dannelli* v. *Dannelli*, 4 Bush 51 (1868), where it

was sought to question the validity of a marri which was said to have been contracted in Switzerland, in evasion of the law of Lombardy, the place of domicile, the same court declared: "As both reason and authority, regard the assent of parties, and the consummation thereof, by cohabitation, as a legal valid marriage, unless prohibited by the municipal laws of the country where celebrated, before we could pronounce this marriage as invalid, the laws of Switzerland making it so would have to be made known to us in a legal manner," which had not been done. It is thus apparent that in neither of these cases was it possible for the court to have held the marriage void as violating the law of the domicile.

Dickson v. *Dickson*, 1 Yerger (9 Tenn.) 110 (1826), is sometimes cited as sustaining doctrine similar to that announced in the principal case. But in that case the party, although divorced in Kentucky, and rendered incompetent to marry, had acquired a new domicile in Tennessee, and there married a man whose domicile was in that state, where they continued to reside until his death. Both parties were therefore qualified by the law of their domicile to contract the marriage. Even had the woman been incompetent the courts of Tennessee, as already pointed out, were under no obligations to hold the marriage void, inasmuch as this would be permitting the laws of Kentucky to work an injustice to the husband whose domicile was in the former state. And in *Fuller* v. *Fuller*, 40 Ala. 301 (1866), a similar state of facts existed, and a similar ruling was made. In neither case is there even a *dictum* in favor of the ruling made in the principal case. But such *dictum* may be found in *Van Storch* v. *Griffin*, 71 Penn. St. 240 (1872).

It is said in the principal case that a contract entered into in another state, if valid according to the law of that state, is valid anywhere. And the court immediately adds that a marriage valid where celebrated, is valid everywhere. There is no doubt of the correctness of both propositions. The difficulty is that neither principle applies to the state of facts before the court. We have tried to show that the last principle does not govern cases, in which a marriage has been contracted out of the state of the domicile, and in evasion of its laws prohibiting the parties from marrying. But if the question is to be tried upon principles of law which govern in cases of ordinary contracts, we think the same result is reached, for we find it laid down as elementary law in all the text writers, that no state is bound to enforce contracts injurious to its own interests, or in fraud or evasion of its laws, though made outside of its jurisdiction, and valid when and where made. Story's Conf. of Laws, sect. 244. And see, *Banchor* v. *Mansel*, 47 Me. 60 (1859); *Smith* v. *Godfrey*, 8 Foster (N. H.) 381, (1854). And this was admitted by Chief Justice PARKER in delivering his opinion in *Medway* v. *Needham*. "This doctrine is repugnant," he said, "to the general principles of law relating to contracts; for a fraudulent evasion of the laws of the country, where the parties have their domicile, could not, except in the contract of marriage, be protected under the general principle."

Great stress was also laid in the principal case, upon the fact that the legislature, while expressly declaring in the statutes of treason and duelling, that those offences should be punished though committed outside the state, yet failed to declare in the statute of marriages that a marriage contracted outside the state should be void. There is, however, a great distinction. It has never been deemed necessary to incorporate such a provision in the marriage laws, for the simple reason that such a provision would simply be in affirmance of the general principle, that all contracts entered into in another state for the fraudulent evasion

of the laws of the place of domicile where the contract is to be performed are void *ab initio*, and will not be recognised in the courts of the home state. Marriage is a civil contract for certain purposes, and is to be performed in the place where the parties reside, and it was not supposed that in this, the most important of all contracts to the welfare of the state as well as to the individual, the courts would recognise as valid, a marriage contract entered into in fraud and evasion of its laws, absolutely prohibiting it as contrary to the public weal. But on the other hand, if the state seeks to punish a criminal act, done by its own citizens outside of the state, it is equally a well settled principle of law, that it is necessary to expressly enact, that such acts shall be deemed punishable as though committed within the state.

In the principal case, the disability to marry is spoken of as a *penalty*, and that as such it can have no extra-territorial force. But in *Elliott* v. *Elliott*, 38 Md. 357, 363 (1873), the objection was raised to a law empowering the court in its discretion to decree in case of divorce, that the guilty party should not marry during the lifetime of the other party, that it was *ex post facto* in so far as it applied to a person who committed adultery before the act went into operation. The court, however, held otherwise. "It did not impose," so said the court, "any new punishment or penalty upon the adulterer, but simply withheld from him relief which he was never entitled to claim, and left him where he was before the decree was passed; under the disabilities of his marriage contract which before existed, or which are imposed, not by the Act of Assembly, but grow out of the marriage contract itself into which he had voluntarily entered." If such a decree leaves the guilty party "under the disabilities of his marriage contract which before existed," he certainly has no more right to marry after such a decree than he had before the decree was pronounced. And as the courts would be compelled to hold a marriage void contracted out of the state and *before* the divorce, so would it also be equally compelled to hold the marriage void contracted out of the state *after* the divorce. The principle "*Leges extra territorium non obligant*" would not apply.

The courts will not allow husband and wife to obtain a divorce in fraud of the law of their domicile, and if both parties by consent go into another state merely for the purpose of obtaining a divorce, and with the intent of returning to their former domicile after such divorce is obtained, upon their return, the courts of the place of domicile hold such a divorce null and void. *Harrison* v. *Harrison*, 20 Ala. 629; *State* v. *Armington*, 25 Minn. 29, 37 (1878); *People* v. *Dawell*, 25 Mich. 247 (1872). And this upon the principle that to each state belongs the exclusive right and power to determine for itself the matrimonial *status* of all its resident and domiciled citizens. The opinion of Mr. Justice COOLEY, in the Michigan case, above cited, is exceedingly able and of great interest. He says "there are three parties to every divorce—the husband, the wife, and the state— and the fact that the first two, consent to the jurisdiction of the courts of another state cannot give validity to the divorce, as the third party, the state where the parties are domiciled has not assented." So we say, there are three parties to every marriage,—the man, the woman, and the state where the parties are domiciled —and the fact that the first two agree to assume the matrimonial relation, cannot create a lawful marriage, if the third party by prohibiting the marriage refuses to assent thereto.

From the cases already cited we deduce these principles:

1. That a marriage valid where celebrated, is valid everywhere, so far as all questions of *form* are concerned.

2. That while the *lex loci* governs in questions of form, the *lex domicilii* determines the capacity of the parties to enter into the marriage contract.

3. That statutory provisions relating to the consent of parents, &c., go to the form of the marriage, and not to the capacity of the parties.

4. That where a marriage is contracted between parties whose domicile is different, the courts of the place of domicile will recognise the validity of the marriage in favor of its own citizen, although the other party may be disqualified by the law of the foreign domicile.

5. When a new domicile is acquired in good faith, the former incapacity ceases, and the capacity of the party must be determined by the law of the new domicile.

In addition to these principles we briefly note:

1. That polygamous and incestuous marriages are everywhere void. *Wightman* v. *Wightman*, 4 Johns. Ch. 343; *Hutchins* v. *Kimmell*, 31 Mich. 126, 134; *Sutton* v. *Warren*, 10 Metc. 451; *Commonwealth* v. *Lane*, 113 Mass. 458, 463; *State* v. *Ross*, 76 N. C. 245.

2. That marriages between infants are voidable and not void. *Cooley* v. *State*, 55 Ala. 162; *Beggs* v. *State*, 55 Id. 108; *Frost* v. *Vought*, 37 Mich. 65. In the case last cited, it is held that the Michigan statute rendering males of eighteen and females of sixteen, competent to contract marriage, makes the marriage actually entered into by them valid, but that it does not empower such persons while under the age of twenty-one to make valid executory contracts of marriage, for breach of which suits may be brought.

3. That marriages between persons, one of whom is insane at the time of marriage, are void. *Middleborough* v. *Rochester*, 12 Mass. 363; *Waymire* v. *Jetmore*, 22 Ohio St. 271; *Crump* v. *Morgan*, 3 Ired. Eq. 91; *Johnson* v. *Kincade*, Id. 470; *Powell* v. *Powell*, 18 Kans. 371. See *Stuckey* v. *Mathes*, 31 N. Y. Supt Ct. 461. That it is voidable. *Cole* v. *Cole*, 5 Sneed 57; *McKinney* v. *Clarke*, 2 Swan. 321.

4. That marriages between slaves were considered void. *Stikes* v. *Swanson*, 44 Ala. 633; *Cantelon* v. *Hood*, 56 Id. 519; *Smith* v. *State*, 9 Id. 996; *Malinda* v. *Gardner*, 24 Id. 719; *State* v. *Samuel*, 2 Dev. & Bat. L. 177; *Howard* v. *Howard*, 6 Jones L. 235; *Hall* v. *United States*, 2 Otto 27; *Ewing* v. *Bibb*, 7 Bush 654; *Steward* v. *Munchandler*, 2 Id. 278; *McReynolds* v. *State*, 55 5 Cald. (Tenn.) 18.

5. That marriages between Indians according to Indian customs are considered valid, although the husband has the right to dismiss the wife at his volition, and the tribe live within the state limits. *Boyer* v. *Dively*, 58 Mo. 510; *Wall* v. *Williamson*, 11 Ala. 839; *Morgan* v. *McGhee*, 5 Hump. 13; *Johnson* v. *Johnson*, 30 Mo. 72.

6. That a marriage procured through the fraud of one party, is generally said to be void. See Schouler Dom. Rel. 35. Reeves Dom. Rel. 206; 2 Kent's Com. 767. 1 Bishop on Mar. and Div. sect. 115. In *Tomppert* v. *Tomppert*, 13 Bush 326 (1877), the Kentucky court repudiates this doctrine, and declares it is only voidable and not void. And see *Guilford* v. *Oxford*, 9 Conn. 326.

7. That the statutory provisions requiring that no marriage be celebrated until after a license has issued, &c., are directory merely, and will not invalidate a marriage performed without compliance therewith, in the absence of express provisions declaring such marriages void. *Ely* v. *Gammel*, 52 Ala. 584, 586; *Beggs* v. *State*, 55 Id. 112; *Parton* v. *Hervey*, 1 Gray 119; *Milford* v. *Worcester*, 7 Mass. 48; *Cargile* v. *Wood*, 63 Mo. 501; *Holabird* v. *Ins. Co.*, 2 Dillon 167; *Rundle* v. *Pegram*, 49 Miss. 751; *Hutchins* v. *Kimmell*, 31 Mich. 133. But where the statutory conditions

have not been complied with, it is held that there must be some independent proof of an actual and voluntary consent, indicating the existence of a deliberately recognised marriage. And positive evidence of non-assent is of weight against an irregular ceremony. *Kopke* v. *People*, 43 Mich. 45 (1880).

8. That a marriage entered into through duress is void, but not when fear arises from an arrest and prosecution for bastardy. *Williams* v. *State*, 44 Ala. 24; *Honnett* v. *Honnett*, 33 Ark. 156. See *Willard* v. *Willard*, 6 Baxter (Tenn.) 298.

9. That there is nothing in the Constitution of the United States which prevents the states from declaring all miscegenetic marriages void. *State* v. *Hairston*, 63 N. C. 451; *State* v. *Reinhard*, 63 Id. 547; *Kinney* v. *Commonwealth*, 30 Gratt. 858; *Green* v. *State*, 58 Ala. 190.

We shall conclude this note with the following quotation from Story's Conf. of Laws, p. 178 (7th ed.): "If the incapacity of the parties is such that no marriage could be solemnized between them, * * * and without changing their domicile they go into some other country where no such limitation or restriction exists, and there enter into the formal relation with a view to return and dwell in the country in which such marriage is prohibited by positive law, it is but proper to say, that a proper self-respect (of the state or government in prohibiting such a marriage) would seem to require that the attempted evasion would not be allowed to prevail."

HENRY WADE ROGERS.

Supreme Court of Pennsylvania.

WIREBACH'S EXECUTOR *v.* FIRST NATIONAL BANK OF EASTON.

A lunatic who is an accommodation endorser without consideration upon a promissory note, and who has derived no advantage from his endorsement, either to himself or his estate, is not liable to a *bona fide* holder, although the latter had no knowledge of the lunacy.

Error to the Common Pleas of Northampton county.

Assumpsit against the executor of Wirebach, upon a promissory note drawn by one Christman to the order of Wirebach, and endorsed by the latter. Plea, non assumpsit.

Upon the trial the following facts appeared: In January 1876, Wirebach endorsed a note of $4000 jointly with Richards and Christman for the accommodation of Stocker & Co., a firm doing business in South Easton, which note was discounted by the First National Bank of Easton. Besides this note of $4000, the bank held at the time ten other notes of Stocker & Co., upon which Wirebach was not an endorser, but upon which Richards and Christman were endorsers, and these notes were carried along from time to time in different amounts, and maturing at different dates. In the beginning of December 1876, after one of the notes fell due and went to protest, Christman had an interview with the